



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Mr. Norbert J. Hart
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR94-612

Dear Mr. Hart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21423.

The City of Corpus Christi (the "city") received an open records request from a rejected applicant for a position as a police officer with the Corpus Christi Police Department. The requestor has asked for materials relating to him. In particular, he seeks "materials identified by or in reference to a personal identifier assigned to [his] name" including his application for employment; all tests results; all background evaluations, psychological evaluations, and polygraph evaluations; and all other information relating to the hiring process. You inform us that the city maintains this information in two separate files: a personnel file and a police department file. You indicate that you have provided the requestor with the information in his personnel file.²

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²The requestor informs us that he has not received any documents in response to his request. For purposes of this letter, we assume that you have provided the requestor with the documents in his personnel file. If you have not already released these documents, you must do so immediately or request another ruling from this office. We remind you, however, that you have missed the deadline for requesting an opinion regarding the documents in the requestor's personnel file and, thus, that you must demonstrate a compelling interest to withhold any of these documents. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

You claim, however, that the information in the police department file is excepted from disclosure by sections 552.101, 552.102(a), and 552.111 of the Government Code (formerly article 6252-17a, sections 3(a)(1), 3(a)(2), and 3(a)(11), V.T.C.S.).

We conclude that section 552.101 excepts from disclosure the criminal history record information contained in the documents you submitted for review. Section 552.101 incorporates into the Open Records Act specific confidentiality statutes. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the Corpus Christi Police Department, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Therefore, you may withhold all the criminal history record information contained in the records you submitted for review under either federal regulations or chapter 411, subchapter F of the Government Code. You may not, however, withhold driving record information. *See* Gov't Code § 411.082(2)(B) (defining criminal history record information as not including driving record information). We have marked the documents accordingly.

Under sections 552.101 and 552.102 of the Government Code, you also claim that section 143.089(g) of the Local Government Code permits a police department to maintain a separate departmental personnel file for its own use and to withhold the information in this file. The information at issue, however, is not subject to section 143.089 of the Local Government Code. Subsection (g) states in relevant part that:

A fire or police department may maintain a personnel file on a fire fighter or *police officer employed by the department* for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. [Emphasis added.]

Because the person who is the subject of the requested records was merely an applicant, not an employee, section 143.089(g) does not apply to the information.

Furthermore, for the purposes of section 143.089(g), "police officer" is defined as "a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status" Local Gov't

Code § 143.003(5). The applicant in this case is not a "police officer" under this statute. Because he is not an employee of the city but is only an unpaid reserve officer, he is not entitled to civil service status. Therefore, the requested information is not protected by chapter 143 of the Local Government Code.

Section 552.023 also requires you to release to the requestor the polygraph information in the file. Although article 4413(29cc), section 19A(b), V.T.C.S., prohibits the city from releasing the polygraph information to any other requestor, section 19A(d) of the same article permits the city to release to this requestor the polygraph information about himself. Thus, in this case section 552.101 does not except the polygraph information from disclosure as information considered confidential by law. See Open Records Decision No. 565 at 8.

Finally, you claim that section 552.111 (formerly article 6252-17a, section 3(a)(11), V.T.C.S.) excepts the requested information from disclosure. We disagree. Section 552.111 excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters. Open Records Decision No. 615 at 5. Because the information you submitted for review relates solely to an internal administrative and personnel matter, you may not withhold it under section 552.111. Accordingly, you must release all of the requested information to this requestor except for the criminal history record information regarding the requestor's mother, father, and sister and the NCIC information regarding the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" being the most prominent part.

Margaret A. Roll
Assistant Attorney General
Open Government Section

Ref: ID# 21423
ID# 21428
ID# 21889
ID# 22670

Enclosures: Open Records Decision No. 615
Marked documents

cc: Mr. Jeffrey Scott Bernsen
4502 Corona, # 6C
Corpus Christi, Texas 78411
(w/o enclosures)